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10/581,220	06/01/2006	Hans Kodden	NL03 1409 US1	1671

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EXAMINER
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TEATERS, LINDSEY C

ART UNIT	PAPER NUMBER
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3742

MAIL DATE	DELIVERY MODE
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06/02/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/581,220	<b>Applicant(s)</b> KODDEN ET AL.	
	<b>Examiner</b> LINDSEY C. TEATERS	<b>Art Unit</b> 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The Amendment filed March 23, 2009 has been entered. Claims 1-17 remain pending in the application. The previous objection to the specification has been withdrawn.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 14-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Winstanley et al (WO 2004/098360 A1).

Re claims 14-16:

Winstanley et al teaches a beverage maker device (100, figure 1) comprising a brewing chamber (110, figures 1 and 4) configured to enclose one or more pads containing a substance from which the beverage is to be brewed (page 4, lines 18-21, specification), a device (300, figure 3) configured to supply water to the brewing chamber, an outflow tube (404, figure 1) configured to conduct the brewed beverage from the brewing chamber, and a wall of the brewing chamber (see figure 3), wherein the

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wall is configured to squeeze the one or more pads without opening the brewing chamber after the process has been finished (if the pad conforms to the inner shape and expands with water, the pad will be squeezed by the wall), wherein the wall is configured having a central portion (see 306, figure 3) that is extended in a downward direction, and wherein the central portion is configured having a protrusion that extends downwards towards the lower wall.

Winstanley et al fails to explicitly teach that the central portion is extended spherically downward, however, the shape of the extension would be inherent as it is a matter of design choice.

***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-2 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winstanley et al (WO 2004/098360 A1) in view of Dawes (US 4,988,019), cited by applicant.

Re claim 1:

Winstanley et al teaches a beverage making device (100, figure 1) comprising a brewing chamber (110, figures 1 and 4) for enclosing one or more pads containing a substance from which the beverage is to be brewed (page 4, lines 17-18, specification), means for supplying water to the brewing chamber (page 4, lines 18-21, specification),

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and means for conducting the brewed beverage from the brewing chamber (404, figure 1).

Winstanley et al fails to teach that the means for conducting the brewed beverage from the brewing chamber is characterized by squeezing the one or more pads after the brewing process has been finished but before the brewing chamber is opened after the brewing process. Dawes, however, teaches squeezing a beverage pad as a means of conducting a brewed beverage from a brewing chamber (column 4, lines 16-22, specification, see also figure 4) which can be carried out after the brewing process and before the brewing chamber is opened (brewing chamber is not opened until disc 16 is removed from the chamber).

In view of Dawes' teachings, it would have been obvious to one of ordinary skill in the art at the time of invention to squeeze the one or more pads as a means of conducting the brewed beverage from the brewing chamber, taught by Winstanley et al. Squeezing the pad to release brewed beverage has been a manual technique in the brewing arts for many years, and it also is a means to drain the pad free of liquid so that when it is removed from the brewing chamber it is sufficiently dry not to make a mess.

Re claim 2:

Winstanley et al also teaches that the brewing chamber has an upper wall (see figure 3) and a lower wall (bottom of 401, figure 4), and that the one or more pads can be located between the upper and lower wall (page 8, lines 13-14 and 20, specification),

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wherein the means for temporarily reducing the distance between the upper and lower wall (closing and locking the upper wall to the lower chamber, see brewhead stature change from figure 3 to figure 1).

Re claim 9:

Winstanley et al also teaches that a central portion of the upper wall is extended in a downward direction (see 306, figure 3).

Winstanley et al fails to explicitly teach that the central portion is extended spherically downward, however, the shape of the extension would be inherent as it is a matter of design choice.

Re claim 10:

Winstanley et al teaches a method of making a beverage by means of a device comprising a brewing chamber (110, figures 1 and 4) for enclosing one or more pads (page 4, lines 17-18, specification) containing a substance from which the beverage is to be brewed (page 4, lines 17-18, specification), means for supplying water to the brewing chamber (page 4, lines 18-21, specification), and means for conducting the brewed beverage from the brewing chamber (404, figure 1)

Winstanley et al fails to teach that the means for conducting the brewed beverage from the brewing chamber comprise means for squeezing the one or more pads. Dawes, however, teaches squeezing a beverage pad as a means of conducting a brewed beverage from a brewing chamber (column 4, lines 16-22, specification, see also figure 4).

In view of Dawes' teachings, it would have been obvious to one of ordinary skill in the art at the time of invention to squeeze the pad as a means of conducting the brewed beverage from the brewing chamber, taught by Winstanley et al. Squeezing the pad to release brewed beverage has been a manual technique in the brewing arts for many years, and it also is a means to drain the pad free of liquid so that when it is removed from the brewing chamber it is sufficiently dry not to make a mess.

Re claim 11:

Winstanley et al teaches the method comprising providing the brewing chamber with an upper wall (see figure 3) and a lower wall (bottom of 401, figure 4) wherein the one or more pads can be located between the walls, and providing the upper wall with a central portion (see 306, figure 3) that is extended in a downward direction.

Re claim 12:

Winstanley et al teaches the method comprising providing the upper wall with a central portion that is extended in a downward direction comprises an act of providing the central portion with a circular protrusion that extends downward towards the lower wall.

Winstanley et al fails to explicitly teach that the central portion is extended spherically downward, however, the shape of the extension would be inherent as it is a matter of design choice.

3. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winstanley et al (WO 2004/098360 A1) in view of Dawes (US 4,988,019), cited by applicant, as applied to claims 1 and 2 above, and further in view of Ruckstuhl (US 6,035,762).

Re claims 3 and 4:

Winstanley et al teaches that the brewing chamber has an upper wall (see figure 3) and a lower wall (bottom of 401, figure 4), wherein one or more pads can be located between the walls.

Winstanley et al, modified by Dawes, fails to teach that one of the walls of the brewing chamber comprises a portion that can move into the brewing chamber after the brewing process has taken place without previously moving the upper wall into an open position after the brewing process, and wherein the portion comprises means for squeezing the one or more pads, and wherein the lower wall can be moved upwards without previously moving the upper wall into an open position after the brewing process.

Ruckstuhl, however, teaches a brewing chamber (4, figure 1) with a wall 2, figure 1) having a portion (12, figure 1) that can move into the brewing chamber without previously moving the upper wall into an open position, and wherein the portion comprises means for squeezing the one or more pads (col. 2, line 40 through col. 3, line 7), and wherein the lower wall (3, figure 1) can be moved upwards without previously



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moving the upper wall into an open position after the brewing process (col. 2, line 40 through col. 3, line 7).

In view of Ruckstuhl's teachings, it would have been obvious to one of ordinary skill in the art at the time of invention to utilize a brewing chamber, taught by Winstanley et al, as modified by Dawes, in which one of the walls can be moved such that the pad therein can be squeezed without first opening the brewing chamber. It is beneficial to drain the pad of excess liquid to prevent messy cleaning and to use the rest of the beverage still stored within the pad. Squeezing the pad before first opening the brewing chamber is more efficient and easier than the user having to manually squeeze the pad or having to remove a soaked pad to throw away, it can also prevent against user harm such as scalding.

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winstanley et al (WO 2004/098360 A1) in view of Dawes (US 4,988,019), cited by applicant, as applied to claim 2 above, and further in view of Cai (US 2003/0096038 A1), cited by applicant.

Re claim 5:

Winstanley et al, as modified by Dawes, discloses the claimed invention as set forth above except that the distance between the upper and lower walls increases due to fluid pressure in the brewing chamber during the brewing process.

Cai, however, teaches a brewing process where the distance between the upper and lower walls of a chamber expand due to fluid pressure during the brewing process (paragraph [0005] lines 14-21).

In view of Cai's teachings, it would have been obvious to one of ordinary skill in the art at the time of invention to have the walls of the brewing chamber, taught by Winstanley et al, as modified by Dawes, expand under the pressure of the brewing fluid. Allowing the walls to expand under the pressure of the brewing fluid is more efficient for the benefit of the mechanical integrity of the structure. Otherwise, the chamber still wants to expand, while the casing of the apparatus must apply a reactive force to keep it stationary.

5. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winstanley et al (WO 2004/09830 A1) in view of Dawes (US 4,988,019), cited by applicant, as applied to claim 1 above, and further in view of Tagawa (US 2002/0008447 A1).

Re claims 6-8:

Winstanley et al, as modified by Dawes, teaches that an upper wall (see figure 3) of the brewing chamber is part of a lid that can be lifted to open the brewing chamber (page 9, lines 3-5, specification), wherein the lid, together with the upper wall can move downwards before the lid is moved upwards to open the brewing chamber (page 8, lines 12-14, specification, the lid can be closed from an open state and then reopened), wherein

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the lid can hinge about a horizontal axis in order to open the brewing chamber (see figure 3), and a latch mechanism to keep the brewing chamber closed (page 8, lines 12-13, specification, and see 106, figure 1).

Winstanley et al, as modified by Dawes, fails to teach that the lid together with the upper wall can move downwards before the lid is moved upwards to open the brew chamber without previously moving the lid into an open position after the brewing process, and that the latch can be released when the lid is pressed downwards.

Tagawa, however, teaches that a latch can be released when a lid is pressed downward (paragraph [0035], see figure 4).

In view of Tagawa's teachings, it would have been obvious to one of ordinary skill in the art at the time of invention to release the latch, taught by Winstanley et al, as modified by Dawes, when the lid is pressed downward. This type of closure allows for an internal type of lock, where no pieces are exposed to the exterior of a product, which is easy to use and aesthetically pleasing.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winstanley et al (WO 2004/098360 A1) in view of Dawes (US 4,988,019), cited by applicant, as applied to claim 10 above, and further in view of Tagawa (US 2002/0008447 A1).

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Re claim 13:

Winstanley et al also teaches a latch (106, figure 1) to keep the brewing chamber closed.

Winstanley et al, modified by Dawes, fails to teach that providing a device to squeeze the one or more pads comprises an act of providing a latch mechanism to keep the brewing chamber closed which is releasable only when the lid is pressed downwards when the lid is in a closed position, thereby squeezing the one or more pads.

Tagawa, however, teaches that a latch can be released when a lid is pressed downward (paragraph [0035], see figure 4).

In view of Tagawa's teachings, it would have been obvious to one of ordinary skill in the art at the time of invention to release the latch, taught by Winstanley et al, as modified by Dawes, when the lid is pressed downward. This type of closure allows for an internal type of lock, where no pieces are exposed to the exterior of a product, which is easy to use and aesthetically pleasing. Even though Tagawa is not applied to a coffee machine, the lid is still pressure downward into an inner compartment, the motion of which could be used to compress whatever is inside of the compartment such as a coffee pad.

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winstanley et al (WO 2004/098360 A1) in view of Tagawa (US 2002/0008447 A1).

Re claim 17:

Winstanley et al teaches a latch mechanism (106, figure 1) configured to keep the brewing chamber closed during brewing.

Winstanley et al fails to teach that the latch is configured to be releasable only when the lid is pressed downwards when the lid is in a closed position, thereby squeezing the one or more pads.

Tagawa, however, teaches that a latch can be released when a lid is pressed downward (paragraph [0035], see figure 4).

In view of Tagawa's teachings, it would have been obvious to one of ordinary skill in the art at the time of invention to release the latch, taught by Winstanley et al, when the lid is pressed downward. This type of closure allows for an internal type of lock, where no pieces are exposed to the exterior of a product, which is easy to use and aesthetically pleasing. Even though Tagawa is not applied to a coffee machine, the lid is still pressure downward into an inner compartment, the motion of which could be used to compress whatever is inside of the compartment such as a coffee pad.

### ***Response to Arguments***

8. Applicant's arguments filed March 23, 2009 have been fully considered but they are not persuasive.

Applicant argues in pages 12 and 13 that the combination of Dawes and Winstanley et al is misplaced with respect to the incorporation of the means for squeezing the pad of Dawes with the beverage making device of Winstanley et al. Applicant states that this combination would clearly result in a combination wherein "the brewhead 104 of Winstanley must be opened to enable depression of the disc member 16 of Dawes" (page 13 lines 9-11). However, claim 1 does not include the limitations of a lid of the brew chamber or that the lid must be closed for the pad to be squeezed. The disc 16 of Dawes can be considered as a lid for the brew chamber shown therein.

Applicant argues on page 13 that Winstanley et al in view of Dawes does not disclose or suggest a device that comprises means for conducting the brewed beverage from the brewing chamber and means for squeezing the one or more pads after the brewing process has been finished but before the brewing chamber is opened after the brewing process. Winstanley et al clearly shows means for conducting (404, figure 1) the brewed beverage from the brewing chamber and Dawes shows means for squeezing the pad after the brewing process has been finished but before the brewing chamber is opened (see rejection above). The limitation of "before the brewing chamber is opened *after the brewing process*" was added upon amendment and was not considered with the arguments.

Applicant argues on page 14 that the independent claims 1 and 10 (14 was added new upon amendment) have been shown to be patentable over Winstanley et al in view of Dawes, and as such all dependent claims should be allowed. However, it has been shown in the rejection above that claims 1 and 10 are indeed unpatentable over Winstanley et al in view of Dawes.

Applicant also argues that Winstanley et al in view of Dawes does not teach "a latch mechanism configured to keep the brewing chamber closed, which latch is releasable only when the lid is pressed downward when the lid is in a closed position. However, Winstanley et al in view of Dawes was not construed to have taught this limitation, which was the initiative to bring in the teachings of Tagawa. The applicant is arguing the references separately and as such the arguments are considered moot.

Applicant finally argues on page 15 that the limitation of claim 9 "wherein a central portion of the upper wall is spherically extended in a downward direction" is not taught by Winstanley et al in view of Dawes. A central portion extending downwardly is clearly shown in Winstanley et al, figure 3. The limitation of a *spherically* extended central portion was added upon amendment and was not considered with the arguments.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

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advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LINDSEY C. TEATERS whose telephone number is 571-270-5913. The examiner can normally be reached on Mon-Thur 8:30am-6:00pm :: alternating Fri 8:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LINDSEY C TEATERS/  
Examiner, Art Unit 3742

05/20/2009

/TU B HOANG/

Supervisory Patent Examiner, Art Unit 3742